

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES

v.

KEMAL MRNDZIC

Docket No. 23-CR-10158

**DEFENDANT'S REVISED AND SUPPLEMENTAL
PROPOSED JURY INSTRUCTIONS**

Pursuant to Federal Rule of Criminal Procedure 30, Mr. Mrndzic hereby respectfully submits the following revised and supplemental jury instructions. The defense respectfully reserves the right to supplement, modify, or withdraw these instructions in light of developments at trial.

Respectfully submitted,

/s/ Brendan Kelley
Brendan Kelley

/s/ Forest O'Neill-Greenberg
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/s/ Caitlin Jones
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CERTIFICATE OF SERVICE

I, Brendan Kelley, hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on October 15, 2024.

/s/ Brendan Kelley
Brendan Kelley

DEFENSE PROPOSED JURY INSTRUCTION NO. 24 - REVISED

**Count Two: Use of a Fraudulently Obtained Naturalization Certificate (18
U.S.C. § 1015(c))²⁴**

Elements of the Offense

In order to prove the defendant guilty of using a naturalization certificate that was procured by fraud or false evidence the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant used a United States naturalization certificate as charged in the indictment;

Second, that the naturalization certificate was procured by fraud or false evidence,;

Third, the defendant used the naturalization certificate knowing it was procured by fraud or false evidence; and

Fourth, the defendant used the naturalization certificate willfully, that is intentionally and voluntarily.

Explanation of the Elements

The first element that the government must prove beyond a reasonable doubt is that the defendant used a United States naturalization certificate as charged in the indictment.

The second element the government must prove is that the naturalization certificate was procured by fraud or false evidence. To establish this element, the government must prove that the defendant made fraudulent or false statements in the application that resulted in the issuance of the naturalization certificate. A supporting document submitted as part of an application for a naturalization certificate is part of that application. A statement is false if it was untrue when made and known at the time to be untrue by the person making it or causing it to be made.

²⁴ See 18 U.S.C. § 1015(c).

Pursuant to *Maslenjak*, 582 U.S. at 338, the defense requests that the jury be instructed on the meaning of “procured by.”

As to the second element, the government may show that a naturalization certificate was “procured by” fraud or false evidence by proving either or both of the following:

1. The fraud or false evidence misrepresented a true fact that would have disqualified the defendant from obtaining his naturalization certificate; or
2. The fraud or false evidence misrepresented a fact that would have led a reasonable official to further investigate the defendant’s qualifications and that such an investigation would predictably have disclosed a true fact that would have disqualified the defendant from obtaining a naturalization certificate.

The third and fourth elements that the government must prove beyond a reasonable doubt are that the defendant acted knowingly and willfully. To act knowingly and willfully means to act deliberately and with knowledge and not in a way that is merely careless, negligent, or inadvertent. Thus, to satisfy these elements, the government must prove that the defendant intentionally used the naturalization certificate knowing that it was procured by fraud or false evidence.

DEFENSE PROPOSED JURY INSTRUCTION NO. 26 - REVISED

Count Three: Possession of a Fraudulently Obtained Authorization Document (18 U.S.C. § 1546(a))²⁶

Elements of the Offense

In order to prove the defendant guilty of possessing an authorization document procured by means of any false claim or statement, the government must prove each of the following elements beyond a reasonable doubt:

First, that the defendant possessed an authorization document procured by means of any false claim or statement, as charged in the indictment;

Second, that the document in question was a document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States; and

Third, that at the time the defendant possessed the document, the defendant knew it was procured by means of any false claim or statement.

Explanation of the Elements

The first element the government must prove is that the authorization document was procured by means of any false claim or statement. To establish this element, the government must prove that the defendant made a false claim or statement in the application that results in the issuance of the authorization document possessed by the defendant (i.e., in the application for a Social Security card or in the naturalization application). A supporting document submitted as part of an application for an authorization document is part of that application. A statement is false if

²⁶ 18 U.S.C. § 1546(a); Sand, et al, *Modern Federal Jury Instructions (Crim)*, Inst. 47-1 (2024).

Pursuant to *Maslenjak v. United States*, 582 U.S. at 338, the defense requests that the jury be instructed on the meaning of “procured by.” In a recent case similar to Mr. Mrndzic’s, the District Court of Arizona gave an instruction on the meaning of “procured by” that followed the language of *Maslenjak*. See Final Jury Instructions, at 19, *United States v. Djurdjic*, No. 17-CR-01658-001-TUC-JGZ (D. Az. May 17, 2023), ECF No. 258.

it was untrue when made and known at the time to be untrue by the person making it or causing it to be made.

The government may show that an authorization document was “procured by means of any false claim or statement” by proving either or both of the following:

1. The false claim or statement misrepresented a true fact that would have disqualified the defendant from obtaining his authorization document; or
2. The false claim or statement misrepresented a fact that would have led a reasonable official to further investigate the defendant’s qualifications and that such an investigation would predictably have disclosed a true fact that would have disqualified the defendant from obtaining an authorization document.

To act knowingly means to act intentionally and voluntarily, and not because of ignorance, mistake, accident, or carelessness.

DEFENSE PROPOSED JURY INSTRUCTION NO. 30 - REVISED

Counts Four, Five, and Six: False Statement (18 U.S.C. §1001(a)(2))³⁰

Specific Unanimity as to Counts Four and Six

In order to bring a false statement charge, the government must identify which statements it believes were false.

Count Four alleges that on March 22, 2022, Mr. Mrndzic made two false statements.

First, that he was a “guard on the outside perimeter.”

Second, that he answered “No” to the question “when you were a guard at Čelebići, like, did you ... did you hurt anybody?”

Count Six alleges that on May 16, 2023, Mr. Mrndzic made two false statements.

First, that he was not “in a position to see” other guards hurting other people.

Second, that he did not participate in hurting any other people.

For Counts Four and Six, you must be unanimous as to which statement you believe was false and material, if any. If, as to Count Four, some of you find that only one statement was false and material, and the rest of you find that only the other statement was false and material, you must acquit Mr. Mrndzic. The same is true for Count Six. If some of you find that only one statement was false and material, and the rest of you find that only the other statement was false and material, you must acquit Mr. Mrndzic.

³⁰ See Ninth Circuit Manual of Model Criminal Jury Instructions – 24.10 (False Statement to Government Agency) (noting in the commentary that “[d]epending on the facts in evidence, it may be appropriate to amend [the false statement] instruction with language requiring specific jury unanimity (e.g., ‘with all of you agreeing as to which statement was false and material’)).